

(b) Information contained in a patent application, or an amendment, modification, supplement or division of an application, and authorized for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office, 37 CFR part 5;¹ or

(c) Information contained in a patent application when sent to a foreign country before or within six months after the filing of a United States patent application for the purpose of obtaining the signature of an inventor who was in the United States when the invention was made or who is a co-inventor with a person residing in the United States.

§ 734.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, § 734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.

(b) Examples of “specific national security controls” include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a “specific national security control”. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

¹Regulations issued by the Patent and Trademark Office in 37 CFR part 5 provide for the export to a foreign country of unclassified technical data in the form of a patent application or an amendment, modification, or supplement thereto or division thereof.

§ 734.12 Effect on foreign laws and regulations.

Any person who complies with any of the license or other requirements of the EAR is not relieved of the responsibility of complying with applicable foreign laws and regulations. Conversely, any person who complies with the license or other requirements of a foreign law or regulation is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR.

SUPPLEMENT NO. 1 TO PART 734—QUESTIONS AND ANSWERS—TECHNOLOGY AND SOFTWARE SUBJECT TO THE EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BIS interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions or answers will be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software classified under ECCN 5D002 for “EI” reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992. This Supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology and exports and reexports of technology that has been or will be published.

Section B: Release of technology at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

Section E: Federal contract controls.

Section F: Commercial consulting.

Section G: Software.

Section H: Availability in a public library.

Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question (§§ 734.3